



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT
AT MALINDI
ELC CASE NO. 50 OF 2016
IN THE MATTER OF: PARCEL OF LAND PLOT NO. L.R. 5786 MALINDI
AND
IN THE MATTER OF: SECTION 38 OF THE LIMITATION
OF ACTIONS ACT, CAP 22 LAWS OF KENYA
AND
IN THE MATTER OF: ORDER 37 OF THE CIVIL PROCEDURE RULES
AND
IN THE MATTER OF: ENVIRONMENT AND LAND COURT ACT, 2011
BETWEEN
BENDERA KARISA KARIMA (*Suing as the Administrator of the*
Estate of SAMSON DAVID MAGAMBO*.....**APPLICANT*
AND
KENYA AIRWAYS LIMITED.....RESPONDENT****
RULING

1. The Plaintiff's Application dated 8th March, 2016 is seeking for the following orders:

a. That the Respondent either by itself, employees, servants, agents, assigns or any other person whomsoever acting for or on its behalf be restrained from entering Plot No. 5786 Malindi, remaining thereupon, disturbing, adversely interfering or otherwise with the Applicant's peaceful, quiet and uninterrupted possession of the said Plot No. 5786 Malindi pending the hearing and determination of this suit or further orders of this Honourable Court.

b. That costs be in the cause.

2. According to the Applicant's Affidavit, she settled on the suit property with her husband in the year 1983 and made substantial improvements on the land; that their matrimonial home is on the land and that the suit land was vacant when they moved on it.
3. It is the Applicant's case that the *status quo* prevailing now should be maintained.
4. In response, the Respondent's Facilities Manager deponed that the suit land was allocated to the Respondent vide a letter of allotment dated 6th May, 1991; that the Respondent accepted the terms of the letter of allotment and that it was subsequently issued with a Certificate of Title in respect to the suit land on 4th July, 1994.
5. According to the Respondent's manager, the suit property was occupied by squatters; that the squatters were evicted from the said land in the year 2006 and that by a letter dated 26th August, 2006, the late Samson David Magambo was informed to vacate the suit land.
6. It is the Respondent's case that the said Samson Magambo was allowed by the Respondent to stay on the land for three months to enable him look for an alternative place.
7. The said Samson having been in occupation of the suit land with the permission of the Defendant, the Defendant's manager deponed that he cannot legally claim the suit property by adverse possession.
8. The Plaintiff and the Defendant's advocate filed their respective submissions and authorities which I have considered.
9. The Plaintiff is seeking to be declared the owner of the suit property by virtue of the doctrine of adverse possession.
10. The Respondent has admitted that indeed, the late Samson Magambo was on the land as at the time the land was registered in its favour in 1994.
11. Indeed, in one of the letters that the late Samson wrote to the Respondent, dated 18th October, 2006, he informed the Respondent that he had been on the land since 1983. This was after the Respondent informed the late Samson to vacate the land vide the letter dated 26th August, 2006.
12. Having admitted that the late Samson, and by extension his family, lived on the suit land, the prevailing *status quo* should be maintained pending the hearing of the suit.
13. I say so because if the Respondent proves that she has been occupying the land for more than twelve years without the permission of the Respondent since 1994, then the court will declare her the owner of the property.
14. In the circumstances, I am satisfied that Plaintiff has established a *prima facie* case with chances of success. Indeed, if the Applicant is to be evicted from the suit land, she will suffer irreparably considering that her matrimonial home is on the suit land.
15. For those reasons, I allow the Application dated 8th March, 2016 as prayed.

DATED AND SIGNED AT MACHAKOS THIS 2ND DAY OF MAY, 2017.

O.A. ANGOTE

JUDGE

DATED, DELIVERED AND SIGNED AT MALINDI THIS 12TH DAY OF MAY, 2017.

J.O. OLOLA

JUDGE